

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAUL BOSCHETTI,
Plaintiff,
v.

DANIEL O'BLENIS,
Defendant.

No. 13-mc-80170 CW
ORDER REMANDING
CASE PURSUANT TO
PRE-FILING ORDER

On August 14, 2013, this Court entered a pre-filing review order regarding cases removed from state court by Defendant Daniel Everett, who is named herein as Daniel O'Blenis. Case No. 13-2706, Docket No. 23, at 1. Under that order, if Defendant seeks to remove Case No. CUD 12-642905 from San Francisco County Superior Court, the Court shall conduct a pre-filing review of the notice of removal. Id. at 1. If the notice of removal "fails to establish legitimate grounds for federal subject matter jurisdiction, the notice of removal may not be filed." Id. at 1. After reviewing the instant notice of removal, the Court finds that Defendant has failed to establish legitimate grounds for subject matter jurisdiction.

DISCUSSION

Defendant cites several federal statutes as his basis for removal but appears to rely principally on 28 U.S.C. § 1443. That statute provides for the removal of any action filed in state court against "any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States." Id. § 1443(1).

1 Although Defendant contends that he is unable to enforce various
2 rights under several federal statutes in state court, he does not
3 appear to have attempted to enforce those rights in this case.
4 Further, Defendant has not presented any evidence nor cited any
5 state law to suggest that the San Francisco County Superior Court
6 would be unwilling or unable to enforce his federal civil rights
7 if he did try to enforce them in that court.¹ The Ninth Circuit
8 has expressly held that a defendant who invokes § 1443 as a basis
9 for removal "must assert that the state courts will not enforce
10 [his or her federal] right, and that allegation must be supported
11 by reference to a state statute or a constitutional provision that
12 purports to command the state courts to ignore the federal
13 rights." California v. Sandoval, 434 F.2d 635, 636 (9th Cir.
14 1970) ("Bad experiences with the particular court in question will
15 not suffice."). Defendant has not satisfied this requirement here
16 and, thus, has not established that removal is permitted by
17 § 1443.

18 Nor has Defendant established that federal subject matter
19 jurisdiction exists under any of the other statutes that he
20 cites -- namely, 28 U.S.C. §§ 1441 and 1446 and 42 U.S.C. §§ 1983 and
21 1988. Most of these statutes do not provide an independent basis
22 for removal and Defendant has not explained how any of them are
23 relevant in this case. Defendant has not asserted any
24

25 ¹ California courts have long had the authority to hear federal
26 civil rights claims. Brown v. Pitchess, 13 Cal. 3d 518, 520-23 (1975)
27 (considering "whether California courts have jurisdiction over federal
28 civil rights suits" and concluding that they do); see also Maine v.
Thiboutot, 448 U.S. 1, 3, n.1 (1980) (recognizing that "state courts may
also entertain [federal civil rights] actions" provided that state law
permits them to do so).

1 counterclaims or defenses based on these statutes and, even if he
2 had, those counterclaims and defenses would not establish federal
3 subject matter jurisdiction. Vaden v. Discover Bank, 556 U.S. 49,
4 60 (2009) ("Federal jurisdiction cannot be predicated on an actual
5 or anticipated defense. . . . Nor can federal jurisdiction rest
6 upon an actual or anticipated counterclaim.").

7 Finally, Defendant's reliance on various procedural rules of
8 the San Francisco County Superior Court is misplaced. Indeed, his
9 reliance on these rules only further underscores the need for
10 remanding this case to state court.

11 CONCLUSION

12 For the reasons set forth above, Defendant's notice of
13 removal may not be filed. The Clerk shall remand the case to San
14 Francisco County Superior Court.

15 The Court notes that this is Defendant's fourth attempt to
16 remove this unlawful detainer action from state court. See Case
17 No. 13-0628, Docket No. 12 (N.D. Cal.); Case No. 13-2706, Docket
18 No. 22 (N.D. Cal.); Case No. 13-0667, Docket No. 22 (W.D. Wash.).
19 Defendant shall not seek to remove this case again unless he can
20 establish legitimate grounds for federal subject matter
21 jurisdiction. If Defendant persists in filing frivolous notices
22 of removal, he may be subject to sanctions.

23 IT IS SO ORDERED.

24
25 Dated: 8/20/2013

26 
27 CLAUDIA WILKEN
28 United States District Judge